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Joint Inspection Unit

The investigation function in the United Nations system

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly his comments and those of the United Nations System Chief Executives Board for Coordination on the report of the Joint Inspection Unit entitled "The investigation function in the United Nations system" (JIU/REP/2011/7).

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Summary

In the report entitled "The investigation function in the United Nations system", the Joint Inspection Unit reviewed progress made in strengthening the investigation function in organizations of the United Nations system over the past decade. The Unit established that, as in the past, internal oversight entities were not operationally independent from their executive heads because those heads were neither free to decide their own budgetary requirements nor able to exercise total control over their human resources. The Unit also found that in a number of organizations responsibility for investigations was fragmented, resulting in some investigations being conducted by non-professional investigators.

The present note provides the views of organizations of the United Nations system on the recommendations made in the report. They have been consolidated on the basis of input from member organizations of the United Nations System Chief Executives Board for Coordination, which welcomed the report and supported some of its conclusions aimed at strengthening the investigation function in organizations of the United Nations system.

I. Introduction

1. In its report entitled "The investigation function in the United Nations system", the Joint Inspection Unit followed up on previous reports on oversight to determine progress made in strengthening the investigation function in organizations of the United Nations system over the past decade. The Unit established that, as in the past, internal oversight entities were not operationally independent from their executive heads because those heads were neither free to decide their own budgetary requirements nor able to exercise total control over their human resources. The Unit also found that in a number of organizations responsibility for investigations was fragmented, resulting in some investigations being conducted by non-professional investigators.

2. The Unit made recommendations designed to foster system-wide coherence and harmonization and called for, among other things, consolidating all investigations in the internal oversight service of each organization, professionalizing the investigation function through the recruitment of qualified staff and their exemption from mobility or rotation schemes within the same organization, centralizing follow-through on the results of investigations, periodically reviewing the adequacy of resources and staffing for investigations, and institutionalizing cooperation and exchange of best practices in the field of investigations among oversight bodies. The Unit also called for the Secretary-General, under the auspices of the United Nations System Chief Executives Board for Coordination (CEB), to establish an inter-agency task force to develop options for establishing a single consolidated United Nations system investigation unit by the end of 2013 for consideration by the relevant legislative bodies. Such consolidation would benefit small agencies without investigative capacity, harmonize business practices, result in common standards and procedures in conducting investigations, resolve independence issues, result in the hiring only of professional investigators, allow staff promotion opportunities and tackle fragmentation issues.

II. General comments

3. Organizations of the United Nations system welcome the report. They acknowledge that the conclusions contained therein will enhance the effectiveness of the United Nations system and that the recommendations are aimed at ensuring the independence of the investigation function in the various organizations. They note, however, that some recommendations are not applicable to small agencies that do not have separate investigation units. They also note that there is a need for further clarification in some areas of the report, such as in paragraphs 18 and 19, where it is suggested that personnel-related issues, such as performance, should not rise to the level of formal investigation.

III. Specific comments on recommendations

Recommendation 1

Executive heads who have not yet done so should direct that all investigations be consolidated in the internal oversight entity of each organization. Requisite resources (human and financial) should be provided for the effective discharge of the investigation function on the basis of the recommendations of the organization's audit/oversight committees.

4. While some organizations of the United Nations system welcome this recommendation, the internal oversight body of the United Nations Secretariat notes that the logistical and financial implications of assigning to it executive authority over the investigation function have not been considered by the Joint Inspection Unit. Implementation would require significant resources to replace what is in effect the current United Nations on-site capacity to deal with category II and lower-level category I investigations. In addition, the internal oversight body of the United Nations Secretariat asserts the critical importance of recommendation 7, given that Member States would require empirical evidence to justify any change resulting in increases in or reallocation of resources to support any decision on the implementation of recommendation 1.

5. Beyond the financial implications, additional risks are associated with the implementation of recommendation 1. If, for example, in the case of the United Nations Secretariat, the oversight body assumed complete responsibility for investigations, alternate measures would have to be implemented to ensure continuing management accountability for proactive preventive measures such as training and awareness, more secure compounds and/or enforcement of off-limits premises and curfews. Furthermore, agencies note that the Unit does not acknowledge that Member States decided on the classification of category I and category II allegations and on the authority of the Office of Internal Oversight Services (OIOS) to refer lower-level category I allegations to programme managers (see ST/SGB/273).

6. Those concerns notwithstanding, the internal oversight body of the United Nations Secretariat notes that recommendation 1 could be implemented insofar as it relates to the investigation of prohibited conduct in the workplace. The recommendation in this regard was based on information received from staff members, investigative units and management. The internal oversight body of the United Nations Secretariat concurs that there is a risk to the Organization if such matters are investigated by non-professionals. Management issues not subject to investigation, however, need to remain the responsibility of management. Investigations should not be used to relieve management of responsibility for managing workplace issues.

7. Nevertheless, the internal oversight body of the United Nations Secretariat expresses its strong support for the recommendation that agencies consolidate all investigations in the internal oversight entities, given that this will introduce greater professionalism into the investigation processes. In this respect, it notes that, regardless of the category of the cases, all cases, if taken further, end up in the same professionalized system of justice, which requires a comparable level of professionalism in the conduct of investigations.

8. Along these lines, the internal oversight body of the United Nations Secretariat notes that, in the report of the Secretary-General on activities of the Office of the United Nations Ombudsman and Mediation Services (A/64/314), the Office of the Ombudsman reported to the General Assembly that:

> "Staff members of the Secretariat and the funds and programmes [had] raised concerns pertaining to investigatory processes related to allegations of harassment, abuse of authority and other forms of misconduct. Investigations were said to be sometimes conducted without due process. It also appeared that investigations were not always undertaken by the appropriate investigative body or by persons who had the right language proficiency."

9. This issue has also been highlighted by the tribunals.

Recommendation 2

Executive heads of United Nations system organizations should ensure that investigation staff are selected in accordance with staff regulations and rules, on the basis of merit, professional investigator qualifications and experience as the main selection criteria. These staff should be selected independently of management and administrative influence, so as to ensure fairness and transparency, increased effectiveness and independence of the investigative function.

10. Organizations of the United Nations system welcome this recommendation. They note that staff should be selected independently of management and administrative influence and in accordance with the relevant rules and regulations. Some organizations, however, assert that merit, qualifications and experience should be the exclusive criteria against which investigation staff are selected.

11. Organizations note that, in the text preceding the recommendation, the Joint Inspection Unit appears to suggest that, in the context of the operational independence of oversight bodies, each oversight head should be entrusted with "full authority to select and appoint his/her staff". While operational independence should be guarded so that oversight bodies are in a position to complete their mandated functions, this independence relates only to internal oversight functions and should not hinder the obligations and authority, as delegated by Member States, of an agency's executive head.

12. In the case of the United Nations Secretariat, the Office of Human Resources Management has been entrusted with responsibility for ensuring that the applicable regulations, rules and issuances are applied consistently throughout the Secretariat. It therefore oversees the recruitment, selection and appointment process in all the departments and offices of the United Nations Secretariat, including OIOS, to ensure that the relevant regulations, rules and issuances are applied correctly and consistently. Nevertheless, the Under-Secretary-General for Internal Oversight Services may appoint staff up to and including the D-1 level, whose appointments are limited to service with OIOS.

Recommendation 3

Executive heads should discontinue mobility for investigators within the same organization and encourage the transfer and/or secondment of investigative staff to the investigative services of other United Nations system organizations.

13. Organizations of the United Nations system have no objection to this recommendation, although its implementation would need to be in line with the relevant staff selection system. To facilitate such transfers, it should be noted that CEB has adopted the Inter-Organization Agreement Concerning Transfer, Secondment or Loan of Staff among the Organizations Applying the United Nations Common System of Salaries and Allowances. It should also be noted that the wishes of staff members in this regard should be considered, while reserving the discretion of management to refuse secondments or loans or to reassign staff to meet operational requirements on the basis of mandated activities. For example, the movement of OIOS investigators to other offices within the United Nations continues to be voluntary, based on application, recruitment and entitlement (once a candidate is selected). While the mandatory rotation of investigators to non-investigative positions is unrealistic given the specialized skills required of investigators, organizations do not support the prohibition on investigation staff voluntarily applying for or moving to other positions for which they are qualified within the same organization, given that their doing so does not affect the independence of the investigation function.

Recommendation 4

The legislative bodies of United Nations system organizations which have not yet done so should direct their executive heads to ensure that internal oversight entities or investigation units are authorized to initiate investigations without the executive head's prior approval.

14. Organizations of the United Nations system support and welcome this recommendation, which is aimed at strengthening the operational independence of the investigation function.

Recommendation 5

The Conference of International Investigators should establish a United Nations system subgroup, similar to that of the United Nations internal audit forum (known as UN-RIAS).

15. Organizations of the United Nations system support and welcome this recommendation, which was initiated at the most recent meeting of the Conference of International Investigators to facilitate benchmarking, dissemination of best practices and enhanced coordination, consistency and cooperation with regard to investigations.

Recommendation 6

The legislative bodies of United Nations system organizations should review the adequacy of resources and staffing of the investigation function on the basis of the recommendations of the respective audit/oversight committees either annually or biennially depending on the organizations' budget cycle.

16. Organizations of the United Nations system note that the legislative bodies of some organizations already review the adequacy of resources and staffing of the investigation function. For example, within the United Nations Secretariat, the Advisory Committee on Administrative and Budgetary Questions considers the advice of the Independent Audit Advisory Committee in its deliberations on OIOS

budget submissions. Organizations also note that, although they welcome this recommendation, it is their executive heads, through appropriately delegated management systems, who should review the adequacy of resources and staffing of the investigation function on the basis of, among other things, the recommendation of the Independent Audit Advisory Committee.

Recommendation 7

Executive heads should designate a central focal point to monitor the implementation and follow-through of all investigation reports within their organizations.

17. Organizations of the United Nations system support and welcome this recommendation.

Recommendation 8

The Secretary-General, under the auspices of CEB, should set up an inter-agency task force that will develop options for establishing a single consolidated United Nations System Investigation Unit by the end of December 2013 for presentation to the legislative bodies.

18. While organizations of the United Nations system welcome this recommendation in principle, they note that the establishment of a single consolidated United Nations system investigation unit would require revising the mandates of all existing investigative units in all the organizations concerned. In addition, organizations that do not have investigative units would need to agree that a single consolidated United Nations system investigation unit would have jurisdiction over them. It would therefore be necessary to seek and obtain the approval of the governing body of each organization before taking any action to create the proposed inter-agency task force.

19. In the absence of a clear indication from the governing bodies of a mandate to establish a single consolidated United Nations system investigation unit, agencies question the value of creating an inter-agency task force to tackle the complex issues associated with the recommendation (such as reporting/accountability lines, staffing, locations and budgets). Furthermore, agencies note the extreme difficulty of achieving such a goal, especially by 2013, given the differences in staff regulations, legal frameworks, investigation guidelines and financial rules and regulations in each organization, in addition to the fact that investigations would require a thorough understanding and knowledge of each organization's operations, some of which are highly specialized.

20. Agencies further suggest that, should all the governing bodies concerned approve the recommendation, CEB could be accorded the mandate to proceed with setting up the proposed task force, including the required support. Organizations therefore note that a centralized unified investigation function would face challenges in satisfactorily meeting the unique requirements of diverse individual agencies, funds and programmes. Given that a centralized investigation function would lack the specialized knowledge required for the diverse regulations, rules and procedures, it would not be efficient or effective to pursue this recommendation.